



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

December 21, 1950

Hon. Will R. Wilson, Jr.  
District Attorney  
Dallas County  
Dallas, Texas

Opinion No. V-1138.

Re: Approval of maps and  
plats of subdivisions  
by cities adjacent  
thereto as a prere-  
quisite to filing with  
the County Clerk.

Dear Sir:

You have requested an opinion on the following questions:

"1. Where an owner of land which lies outside the limits of any city, but within five miles of the limits of a city, divides such land into two or more parts for the purposes described in Sec. 1, Article 974a, V. C.S., does the law require that maps and plats of such land be approved by an agency of the city before filing for record with the County Clerk?

"2. If, in such case, the land is within five miles of the limits of more than one city, which city, if any, shall make the requisite approval?

"3. Is the approval of the Commissioners' Court of the county in which the land lies required for such filing and recording in all cases in which the land lies outside the limits of a city?"

In order to answer your request, it is necessary that we determine the law relative to recordation of maps or plats of land situated outside of, but within five miles of, the corporate limits of a city or town prior to the enactment of House Bill 158, Acts 51st Leg., R.S. 1949, ch.154, p.321.

Article 974a, V.C.S. (Acts 40th Leg., R.S. 1927, ch.231, p.342) provided in part:

"Sec. 1. That hereafter, every owner of any tract of land situated within the corporate limits or within five miles of the corporate limits of any city in the State of Texas which contains twenty-five thousand inhabitants or more, according to the Federal Census of 1920, or any subsequent Federal Census, who may hereafter subdivide the same in two or more parts for the purpose of laying out any subdivision of any such town, or city, or any addition thereto, or any part thereof, or suburban lots or building lots, or any lots, and streets, alleys, parks or other portions intended for public use, or for the use of purchasers or owners of lots confronting thereon or adjacent thereto, shall cause a plat to be made which shall accurately describe all of the subdivision of such tract or parcels of land, giving dimensions thereof, and the dimensions of all the streets, alleys, squares, parks, or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

"Sec. 2. That every such plat shall be duly acknowledged by owners or proprietors of the land, or by some duly authorized agent of said owners or proprietors, in the manner required for the acknowledgment of deeds; and the said plat, subject to the provisions contained in this Act, shall be filed for record and be recorded in the office of the County Clerk of the County in which the land lies.

"Sec. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act, if said city have a City Planning Commission and if it have no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five miles of more than one city affected by this Act, then the requisite approval shall be by the City Planning Commission or Governing Body, as the case may be, of

such of said cities having the largest population. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission or governing body herein authorized to approve same, which shall act upon same within thirty days from the filing date. If said plat be not disapproved within thirty days from said filing date, it shall be deemed to have been approved and a certificate showing said filing date and the failure to take action thereon within thirty days from said filing date, shall on demand be issued by the City Planning Commission or Governing Body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or Governing Body. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter."

Article 6626, V.C.S. (Acts 42nd Leg., R.S. 1931, ch.217, p.371), provided:

"The following instruments of writing which shall have been acknowledged or proved according to law, are authorized to be recorded, viz: all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property of any description, provided, however, that in cases of subdivision or resubdivision of real property no map or plat of any such subdivision or re-subdivision shall be filed or recorded unless and until the same has been authorized by the Commissioners' Court

of the county in which the real estate is situated by order duly entered in the minutes of said Court, except in cases of partition or other subdivision through a Court of record; provided, that within incorporated cities and towns the governing body thereof in lieu of the Commissioners' Court shall perform the duties hereinabove imposed upon the Commissioners' Court."

In construing the provisions of the above Acts it was held in Trawalter v. Schaefer, 142 Tex. 521, 527, 179 S.W.2d 765, 768 (1944):

"... Article 974a, Acts 1927, provides that maps or plats of subdivisions such as the one here involved shall be approved by certain named authorities of cities and towns of 25,000 inhabitants or more, if the land represented by such maps or plats is situated within the corporate limits of such municipalities or within five miles thereof. Article 6626, Acts 1931, by its very plain language provides that no map or plat of any subdivision of land shall be filed or recorded until such filing and recording has been authorized by the commissioners court. Article 6626, Acts 1931, then excepts from its general provision maps or plats of subdivisions situated within the corporate limits of cities and towns, and maps or plats of subdivisions authorized by courts of record. It is plainly evident that the exception to Article 6626, Acts 1931, regarding maps or plats of land situated within the corporate limits of cities and towns operates to keep in force the provisions of Article 974a, Acts 1927, in so far as such last-mentioned Act covers maps or plats of land situated within the corporate limits of the cities and towns mentioned therein, but it does not operate to preserve or keep in force such Act in so far as it covers extraterritorial lands. Certainly had the Legislature intended such a construction to be given Article 6626, Acts 1931, it would have included lands within five miles of cities and towns of 25,000 inhabitants or more in the language of the exception.

Hon. Will R. Wilson, Jr., page 5 (V-1138)

"Even if it should be held that Article 6626, Acts 1931, has not repealed the extra-territorial provisions of Article 974a, Acts 1927, then maps or plats of lands located within five miles of cities and towns containing 25,000 inhabitants or more would be included within the provisions of both Acts, and in such instances both Acts would have to be complied with. We hardly think that such was the intention of the Legislature; and yet this conclusion would be inescapable if it should be held that Article 6626, Acts 1931, has not repealed the extraterritorial provision of Article 974a, Acts 1927. At this point we wish to say that we express no opinion as to the validity of the extraterritorial provision of Article 974a, Acts 1927. . . ."

It is seen from the foregoing that maps or plats of land lying within the corporate limits of a city or town needed only the approval of the governing board of such city or town, while maps or plats of land lying outside the corporate limits of a city or town needed only the approval of the commissioners' court of the county in which the land was situated, the extra-territorial provisions of Article 974a, Acts of 1927, being repealed by Article 6626. Trawalter v. Schaefer, supra.

It is stated in 1 Sutherland, Statutory Construction (3rd Ed. 1943) 1926:

"A reviving act is one which restores legal existence and force to a statute that has been expressly or impliedly repealed. A repealed statute may be revived by express enactment or by implication."

Therefore House Bill 158 is in our opinion a reviving Act restoring the extraterritorial provisions contained in Article 974a, which provides:

"Section 1. That hereafter every owner of any tract of land situated within the corporate limits, or within five miles of the corporate limits of any city in the State of Texas, who may hereafter divide the same in two or more parts for the purpose of laying out any subdivision of any tract of land or

any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made thereof which shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part, giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto; provided, however, that no plat of any subdivision of any tract of land or any addition to any town or city shall be recorded unless the same shall accurately describe all of said subdivision or addition by metes and bounds and locate the same with respect to an original corner of the original survey of which it is a part giving the dimensions thereof of said subdivision or addition, and dimensions of all streets, alleys, squares, parks or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto."

In view of the foregoing, it is our opinion that maps or plats of "land situated within the corporate limits or within five miles of the corporate limits of any city" are required by Article 974a as amended by House Bill 158, Acts 51st Leg., R.S. 1949, ch.154, p.321, to be approved by the proper authorities of such city prior to the recordation by the County Clerk. We express no opinion as to the constitutionality of the extra-territorial provisions of House Bill 158. Trawalter v. Schaefer, supra; Att'y Gen. Op. V-934 (1949).

In answer to your second question, you are advised that if such land lies outside of and within five miles of more than one city, Article 974a requires the approval of the proper authorities of the city having the largest population.

Hon. Will R. Wilson, Jr., page 7 (V-1138)

There is no provision in House Bill 158 which would indicate that it was the intention of the Legislature to repeal Article 6626. On the contrary, the enactment of House Bill 158 subsequent to the decision in Trawalter v. Schaefer, supra, indicates that it was the intention of the Legislature that both Acts (Arts. 6626 and 974a) should stand. You are therefore advised that maps or plats of land lying outside the corporate limits of a city or town must be approved by the commissioners' court.

SUMMARY

Maps or plats of land situated within five miles of the corporate limits of any city are required by Article 974a, V.C.S., to be approved by the proper authorities of the city. If such land lies within five miles of more than one city, Article 974a requires the approval of the proper authorities of the city having the largest population. Maps or plats of land lying outside the corporate limits of a city require the additional approval of the commissioners' court. Art. 6626, V.C.S.

APPROVED:

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Yours very truly,

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By   
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